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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 966

Case No. 1050: El-HAJ

Against: The Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Hubert Thierry, President; Mr. Chittharanjan Felix Amerasinghe; Mr. Victor Yenyi Olungu;

Whereas, on 4 November 1998, Mohammad El-Haj, a former staff member of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (hereinafter referred to as UNRWA or the Agency), filed an application containing pleas which read as follows:

"II. PLEAS

...

(b) ... I solicit the jurisdiction of the [United Nations] Administrative Tribunal:

(i) To adjudicate our dispute with UNRWA in light of the two recommendations of the Joint Appeals Board both on the substance of our appeal and on its receivability as opposed to UNRWA's contentions that our appeal was not to be receivable by the Joint Appeals Board;

(ii) To ask ...UNRWA's Chief, Provident Fund Secretariat, HQ (Amman) to testify in the dispute in light of his counsel (...) which he submitted to UNRWA before the submission of our appeal, but which UNRWA Administration did not take into consideration; and

(iii) To finally request UNRWA to implement the rule of currency conversion in our situation as of the actual date of payment, being the date on which our benefits were actually transferred to our Provident Fund accounts i.e. 1 August 1996, in compliance with UNRWA's Finance Technical Instruction 614 of 27 June 1995;

(iv) [To consider the fact] that our separation benefits are a financial right tantamount to entitlement to monthly salary, etc, [and that] [a]ccordingly, the follow up on such a right cannot be subdued to a time frame for appeal as contended by UNRWA Administration. In other words, UNRWA Administration cannot invoke the non receivability of our appeal, from its own perspective, in order to infringe on our financial right, so to speak. This is a right not forfeitable with the passage of time."

Whereas the Respondent filed his answer on 16 May 1999;

Whereas the Applicant filed written observations on 8 July 1999;

Whereas, on 12 July 2000, the Tribunal put questions to the Respondent, to which the Applicant responded on 15 July 2000, and to which the Respondent provided answers on 27 July 2000;

Whereas, on 30 July 2000, the Applicant provided comments on the Respondent's submission of 27 July 2000;

Whereas, on 2 August 2000, the Tribunal ruled that no oral proceedings would be held in the case:

Whereas the facts in the case are as follows:

The Applicant entered service as an Area staff member with UNRWA in 1956 with the functional title of Typist (grade 4). He received a series of promotions and changes in functional title, and served in posts in Lebanon and Vienna. On 4 August 1996, he received a twelve-month, fixed-term appointment to the International post of Public Information Officer (Arabic), at the P-3,

step 10 level, at UNRWA Headquarters, Gaza. His last fixed-term appointment expired on 4 August 1997.

On 28 October 1994, all Area staff members with UNRWA, Vienna, were declared provisionally redundant, due to the relocation of UNRWA Headquarters to Gaza.

On 17 May 1996, anticipating that many Area staff members would be separating from service, UNRWA issued staff circular 4/96 which advised staff members that separation benefits would be payable in June 1996, notwithstanding the fact that the staff members would not be eligible for these payments until separation from service later that summer. Staff members had the option to request that all or part of their separation benefits be paid into their Provident Fund account, either in Austrian Shillings (ATS) or in US dollars.

In response to the circular, on 26 June 1996, the Applicant requested payment of ATS 600,000 plus payment in lieu of accrued annual leave to his Austrian bank account, with the remainder to be paid into his US dollar Provident Fund account. On 28 June 1996, the Applicant's separation benefits were calculated. A payment of ATS 725,979.62 was made to his bank account on 28 June 1996 and the balance was converted into US dollars and credited to the Retiree's Credits Account in the Provident Fund. The conversion was done on the ATS/US dollar exchange rate in effect on 1 June 1996. The funds were credited to the Applicant's Provident Fund account on 1 August 1996.

On 12 January 1997, on receipt of their Provident Fund statements, the Applicant and three colleagues contacted the Respondent with regard to the exchange rate utilized. As their Provident Fund accounts had not been credited until 1 August 1996, they argued that the rate of exchange should be that of 1 August rather than 1 June 1996. On 20 January 1997, the Chief, Provident Fund Secretariat, Headquarters (Amman), wrote to the Controller Headquarters (Gaza), stating that the "partial payment [made] in July (sic) 1996 towards separation benefits was only an advance payment … [that] full payment … was not due until 1 August 1996 … [and that] accordingly, the correct date of exchange, which would apply in this instance, [was] for August 1996. On 12 February 1997, the Director of Administration and Human Resources advised the Applicant and his three colleagues that, as the financial transactions had taken place in June, the applicable

exchange rate in accordance with Financial Technical Instruction No. 21 was June rather than August.

On 28 May 1997, referring to the Instruction, the Applicant again contacted UNRWA with reference to this matter, arguing that the Instruction supported his contention. The Director of Administration and Human Resources replied on 1 June 1997, again confirming that, as the transactions had taken place in June, the exchange rate which applied was that of June 1996.

On 17 June 1997, the Applicant lodged an appeal with the Joint Appeals Board (JAB). In its report of 9 February 1998, the JAB recommended that the Administration review its decision. On 17 March 1998, the Commissioner-General wrote to the Applicant, informing him that he had returned the matter to the JAB for clarification with respect to the preliminary issue of receivability, which had not been addressed by the JAB.

On 5 July 1998, the JAB submitted a second report. Its evaluation, judgement and recommendation read as follows:

"**III. EVALUATION AND JUDGEMENT**

18. In its deliberations, the Board dwelt on the preliminary issue of receivability and decided to declare the appeal receivable for the following reason:

> The Board considered the letter ...dated 1 June 1997, from the Director of Administration and Human Resources to the Appellant [as] the final letter in which the Director refuses to review his decision and from which the time limits start, therefore the letter [of appeal] from the Appellant dated 17 June 1997 has been submitted within the 30 days time limit and cannot be considered as time barred.

IV. RECOMMENDATION

19. In view of the foregoing, the Board unanimously declares the appeal receivable."

On 3 August 1998, the Commissioner-General transmitted a copy of the JAB report to the Applicant and informed him as follows:

"...

... the Administration based its objection to the receivability of the appeal on a breach of the first paragraph of staff rule 111.3, which provides that, as a first step, a request for review be sent to the Administration 'within 30 days from the date on which the staff member receives written notification of the decision in question'.

You received written notification of the decision to apply the June conversion rate by letter from the Director of Administration and Human Resources dated 12 February 1997. However, you did not request a review of that decision until 28 May 1997, that is, more than two months after the deadline prescribed by staff rule 111.3 (1) had passed.

Staff rule 111.3 (4) provides for the waiver of time limits 'in exceptional circumstances'. However, you did not submit any evidence of such circumstances and the Board does not find any such circumstances in its report.

Accordingly, I have decided to reject the recommendation made by the Joint Appeals Board on the preliminary issue of receivability.

..."

On 4 November 1998, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contention is:

The date on which his separation benefits were converted from ATS into US dollars and paid to his Provident Fund account was 1 August 1996. Financial Technical Instruction No. 21 stipulates that, when payment has been approved to be made in a currency other than the entitlement, the conversion will be made at the UN book rate ruling at the date of payment.

Whereas the Respondent's principal contentions are:

1. The application is not receivable by the Tribunal. As the JAB has not made any recommendation on the merits of the case, the Respondent believes that it would be procedurally inappropriate for the Tribunal to consider the merits of the dispute at this time. If the Tribunal were to find that the appeal was receivable, it would refer the matter back to the JAB for consideration on the merits.

2. Should the Tribunal find that the case is receivable, the Respondent maintains that, in accordance with paragraph 6 of Financial Technical Instruction 21, the relevant exchange rate is the rate pertaining at the date of the payment transaction. In accordance with the Applicant's instructions, calculations were made, in June 1996, of his benefit and accrued annual leave. Part of the money was paid directly into his bank account and the remainder to the Retirees' Credit Account, pending the Applicant's entitlement to have those funds credited to his individual Provident Fund account. Thus, although the latter amount was not credited to the Applicant's Provident Fund account until August 1996, the actual payment occurred in June 1996.

The Tribunal, having deliberated from 4 July to 3 August 2000, now pronounces the following judgement:

I. There are two issues in this case:

(i) Did the Applicant exhaust his internal remedies in a timely manner in his appeal to the JAB?

(ii) What was the correct date for the conversion of the deposit into the Applicant's Provident Fund account?

II. On the first issue the Tribunal notes the following facts:

On 12 January 1997, on receipt of their Provident Fund statements, the Applicant and three colleagues contacted the Respondent with regard to the exchange rate utilised. As their Provident Fund accounts had not been credited until 1 August 1996, they argued that the rate of exchange should be that of 1 August rather than 1 June 1996. On 12 February 1997, the Director of Administration and Human Resources advised that as the financial transactions had taken place in June, the applicable exchange rate in accordance with Financial Technical Instruction No. 21 was June rather than August. The Applicant contends that he made repeated requests for a copy of this Instruction, but that he was not provided with a copy. Having obtained a copy of the Instruction in "an informal way", on 28 May 1997, the Applicant and his colleagues again contacted UNRWA

with reference to this matter, arguing that the Instruction supported their contention. The Director of Administration and Human Resources replied on 1 June 1997, again confirming that as the transactions had taken place in June, the exchange rate which applied was that of June 1996. On 17 June 1997, the Applicant filed an application with the JAB.

III. The Tribunal notes that the Applicant was not able to obtain a copy of the Financial Technical Instruction until 28 May 1997. He immediately contacted the UNRWA Administration and received on 1 June 1997 a reply refusing his request for a change in the date of the application of the exchange rate. Therefore, the Tribunal holds that the relevant date of the administrative decision for the running of time in connection with the appeal to the JAB was 1 June 1997. It is a recognized principle of international administrative law that internal remedies must be exhausted in a timely manner (cf. Judgements No. 189, *Ho* (1974); No. 201, *Branckaert* (1975)). The Applicant filed his appeal on 17 June 1997 and was thus within the 30 day time limit for the filing of appeals. The Tribunal, concludes that the Applicant resorted to his internal remedies in a timely manner and that the JAB rightly decided that the appeal was receivable.

IV. On the second issue, the Tribunal requested the Respondent to clarify certain facts. It would seem that the Applicant gave instructions in his request of 26 June 1996 that his Provident Fund entitlement be transferred immediately to his Provident Fund account before the move to Gaza in July. He did not expressly request the transfer to take place at a later date, nor did he advert to the date of conversion. Thus, the *transfer* of the funds took place in June 1996. The question is whether the transfer made in June gave the Applicant ownership of the funds and constituted a *payment* for the purposes of the Financial Technical Instruction.

V. The transfer was made on June 26, 1996 to the Retirees' Credit Account which is maintained in the name of each individual member of the Provident Fund. Hence, the transfer of funds was to an account in his name. The Respondent has stated in response to a question put to it by the Tribunal that the Applicant, "in June 1996, received ownership of the funds when the Agency acceded to his request for advance payment". It would seem, therefore, that not only did the

Applicant request advance payment but must have been aware that the funds would be deposited after conversion into US dollars into an account belonging to him in the Retirees' Credit Account. The correct date of payment for the purposes of the Instruction, particularly because the Applicant received ownership of the funds at this time, was 26 June 1996. Since the conversion, according to the Instruction, had to be made "at the UN book rate ruling at the date of payment", the conversion was rightly made according to the exchange rate prevailing in June and not in August. The Applicant's claim is, therefore, without merit.

VI. For the above reasons, the Tribunal:

(a) Decides that the application is receivable;

(b) Rejects all pleas.

(Signatures)

Hubert THIERRY
President

Chittharanjan Felix AMERASINGHE
Member

Victor YENYI OLUNGU
Member

Geneva, 3 August 2000

Maritza STRUYVENBERG
Executive Secretary